IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Nawab Khan & ors. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 1417/2005

and

Nanu Khan & ors. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 1418/2005

...

Date of Order: September 18, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Sanjay Mathur, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By both these criminal miscellaneous petitions under Section 482 Cr.P.C., the petitioners have challenged the order dated 7-4-2005 passed by the Additional Sessions Judge, Churu (for short, "the Revisional Court" hereinafter), whereby the revision petition filed by the non-petitioner No.2 against the

order dated 27-9-2004 passed by the Judicial Magistrate, Sardarshahar, district Churu (for short, "the trial Court" hereinafter), was allowed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the courts below.

It appears that the trial Court took cognizance of the offences under Section 498-A and 406 IPC against the petitioners on 6-8-2001. However, subsequently, the petitioners filed an application for recalling the order taking cognizance. The trial Court recalled the order taking cognizance. Obviously, the order of the trial Court is against the provisions of the Code and it was challenged. The Revisional Court set aside the order of the trial Court recalling its order taking cognizance by relying on a decision of the Hon'ble Supreme Court in Adalat Prasad Vs. Roop Lal Jindal, JT 2004 SC 243. In my view, the Revisional Court was justified in setting aside the order of the trial Court.

It is settled law that under the Code, the power of recalling the order has not been provided. This controversy stands set at rest in view of the decisions of the Hon'ble Supreme Court in Adalat Prasad Vs. Roop Lal Jindal's case (supra) and Subbramanim Sethuman Vs. State of Maharashtra, 2004 Cri.L.J. 4609. In this view of the matter, no case for interference in the impugned order is made out.

Consequently, both the criminal miscellaneous

petitions are dismissed. The stay petitions also stand dismissed. The record of the trial Court be returned forthwith.

(H.R. PANWAR), J.

mcs